IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3975 OF 2005.
IN
SUIT NO. 2405 OF 1986.

The Sangli Bank Ltd. ... Plaintiff.
Versus.
Mehta & Co. and others. ... Defendants.

Shri N.D.Yelkar for the Plaintiff.

CORAM : ABHAY S.OKA, J.

DATED : 1st October, 2007.

P.C.:

1. Heard the learned Counsel appearing for the Plaintiff in support of the Notice of Motion. He stated that the Defendants are duly served with the Notice of Motion. None appears for the Defendants. There is no reply filed by the Defendants on record. The suit filed by the Plaintiff has been dismissed for non-prosecution on 14th June 2005. Notice of Motion No.1870 of 2005 was taken out by the Plaintiff for restoration of the suit. The said Notice of Motion was dismissed on 8th December 2007.

2. In the affidavit-in-support of the Notice of Motion filed by one Avinash Srikrishna Puntambekar, the Law Officer of the Plaintiff, it is stated that the Notice of Motion was listed before this Court on 8th December 2005 at Sr.No.84. It is stated in the affidavit that the Advocate representing the Plaintiff was held up in another Court and when he came to the concerned Court at about 1.00 p.m. he found that the Notice of Motion No.1870 of 2005 was dismissed on

account of his absence. The present Notice of Motion has been taken out on 9th December 2005 i.e. immediately on the next day after dismissal of the Notice of Motion.

3. In view of what is set out in the affidavit-in-support, a case is made out for restoration of Notice of Motion No.1870 of 2005. The prayer made in this Notice of Motion is for restoration of Notice of Motion as well as the suit. Notice of Motion No.1870 of 2005 was taken out for restoration of the suit. Therefore, the said Notice of Motion will have to be restored and the prayer for restoration of the suit will have to be considered in the said Notice of Motion.

4. Hence the following order is passed:

(i) Order dated 8th December 2005 is set aside and Notice of Motion No.1870 of 2005 is restored to file. Notice of Motion No.1870 of 2005 shall be set down for hearing on 11th October 2007.

(ii) The Plaintiff to serve notice to the Defendants informing about the date of hearing of Notice of Motion No.1870 of 2005.

(iii) Notice of Motion is disposed of in the above terms with no order as to costs.

Judge.